IN THE COURT OF APPEALS OF IOWA

No. 5-083 / 94-217

FILED
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CLERK SUPREME COURT

MURIEL MARIE MADSEN,

Plaintiff-Appellee,

vs.

OTIS JAVAINE MADSEN,

Defendant-Appellant.

Appeal from the Iowa District Court for Audubon County, James M. Richardson, Judge.

The defendant appeals a district court judgment awarding quiet title to certain property with the plaintiff. **AFFIRMED.**

Brian P. Anderson of the Anderson Law Offices, Audubon, for appellant.

C.R. Hannan of Perkins, Sacks, Hannan, Reilly & Petersen, Council Bluffs, for appellee.

Heard by Sackett, P.J., and Cady and Huitink, JJ.

CADY, J.

This is an appeal by Otis Madsen from a decree by the district court quieting title to certain property to Muriel Madsen. On our de novo review, we affirm.

Otis and Muriel were divorced in January 1990. They had been married for more than thirty years. Pursuant to a stipulation, all their real property was awarded to Otis, subject to the accompanied indebtedness. The only issue tried by the court related to attorney fees and court costs. The court incorporated the stipulation into its decree. Neither the stipulation nor decree described the real estate awarded to Otis. The parties filed no financial affidavits or other documents during the pendency of the action identifying the real estate they owned.

Otis and Muriel owned a 165 acre farm located east of Kimballton at the time of their divorce. Otis also owned business property in Kimballton, which was always considered to be Otis' property. In February 1987, Muriel's father died, leaving Muriel and her two brothers a remainder interest in one-half of a farm located west of Kimballton. Muriel's mother received the remaining one-half of the farm, as well as the life estate in the half subject to the remainder interest. Muriel had little to do with the property. She did not consider herself an heir as long as her mother was living. She received no rents or profits from the land during the marriage, and expended no funds on the land.

In October 1990, Otis, through his attorney, sent Muriel, through her attorney, a quit claim deed for her to sign transferring her interest in their farm located east of Kimballton. The deed legally described the real estate and indicated that it was given in compliance with the dissolution decree. Muriel complied with the request and signed the deed.

In October 1992, Muriel asked Otis to execute a quit claim deed to her regarding her remainder interest in the farm west of Kimballton. Otis refused. He claimed to have received the interest in the divorce.

Muriel subsequently initiated a quiet title action to determine ownership of the remainder interest. She testified the property was never discussed during the pendency of the dissolution and was not part of the decree. Financial documents prepared by Muriel during the pendency of the dissolution never mentioned the disputed farm. Otis implied in his testimony that he understood the remainder interest was part of the stipulation.

The district court found Muriel was entitled to quiet title to the remainder interest. Otis appealed.

Otis raises a host of objections on appeal. He argues Muriel's remainder interest was vested and transferable at the time of the divorce, and he was the title holder under the terms of the decree. He asserts the decree was clear and unambiguous, and the trial court erred in allowing Muriel to testify about discussions surrounding the entry

of the stipulation. Otis also argues that Muriel's quiet title action is an impermissible collateral attack on the dissolution decree, and is prohibited by the doctrines of claim and issue preclusion. Otis further maintains the action is an attempt to modify a property division. Finally, Otis argues that any attempt to correct or amend the decree under rule 252 would be untimely.

I.

A dissolution of marriage decree ordinarily settles all property rights and interests of the parties in the property of each other. Sieren v. Bauman, 436 N.W.2d 43, 45 (Iowa 1989). It realigns the parties' interest in the property and creates new title or ownership. Id. Accordingly, when a dispute arises between divorced spouses over the ownership of property held during the marriage, we look to the decree to determine the legal rights of the parties.

A dissolution of marriage decree is interpreted under the same rules as other instruments. Id. at 46. If the language of the decree is clear and unambiguous, the court must only ascertain the legal effect of the language of the decree. See Serrano v. Hendricks, 400 N.W.2d 77, 79 (Iowa App. 1986). If the language is ambiguous, extrinsic evidence may be considered to help confirm the ambiguity and bring the decree into harmony with the intent of the court. Bowman v. Bennett, 250 N.W.2d 47, 50 (Iowa 1977). The objective is to determine the design of the dissolution court. Sieren, 436 N.W.2d at 46.

An ambiguity exists in a decree when, after application of the rules of interpretation, a genuine uncertainty exists over which of two reasonable interpretations is proper. See Iowa Fuel & Minerals, Inc. v. Iowa State Bd. of Regents, 471 N.W.2d 859, 863 (Iowa 1991). An ambiguity may be intrinsic or extrinsic. See South Bend Lathe, Inc. v. Amsted Industries, Inc., 925 F2d 1043, 1045 (7th Cir. 1991). It is intrinsic when it arises from the lack of clarity in the document. See Federal Deposit Ins. Corp. v. W.R. Grace & Co., 877 F.2d 614, 620-21 (7th Cir. 1989). It is extrinsic when, although the instrument itself seems clear, an uncertainty surfaces after it is applied to a particular situation. Id. In this situation, extrinsic evidence is admissible to demonstrate the ambiguity. Id.

In this case, the decree seemed perfectly clear. It awarded "all real estate" to Otis. When the circumstances surrounding the disputed land are considered, however, the decree no longer provides a clear roadmap. Muriel clearly did not consider her remainder interest to be property of the marriage subject to the division. She did not even consider the inheritance to be completed at the time of the divorce. Moreover, despite his vague assertion at trial, Otis too never treated the remainder interests as property of the marriage. Even after the divorce, his only interest in effectuating title to the property awarded under the decree was to request a quit claim deed on the farm east of

Kimballton. This was because both parties considered this to be the divisible real estate in the dissolution proceeding.

We do not look to the secret intent of one of the parties, in interpreting equity decrees, but the intent of the court as disclosed by the circumstances under which the decree was entered. See In re Marriage of Harvey, 393 N.W.2d 312, 313 (Iowa 1986). Under our de novo review, we find the decree ambiguous, and correctly interpreted by the trial court to exclude transfer of the remainder interest to Otis.

We have considered the remaining claims asserted by Otis and find they are without merit. We agree that Otis could have acquired Muriel's remainder interest in the real estate if the decree intended the interests to be transferred to him. It did not. Furthermore, a proceeding which requires the court to interpret its decree does not conflict with the doctrines of claim or issue preclusion, and is outside the scope of the time requirements to amend or correct a decree.

Under the circumstances of this case, we find title to the remainder interest remained with Muriel. The trial court correctly quieted title to Muriel. Muriel failed to preserve her claims for attorney fees.

AFFIRMED.